



Commonwealth of Virginia  
Virginia Information Technologies Agency

**DB2 TOOLSET SOFTWARE**

**Optional Use Contract**

Date: December 12, 2003

Contract #: VA-031031-NG

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

Contractor: "See Attached"

FIN: 95-2126773

Contact Person: "See Attached"

Pricing: "See Attached"

FOB: Destination

Delivery: 5 Days ARO

Term: December 10, 2003 – April 20, 2005

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Compliance Information:

Carmen Holmes, VCO  
Contracts Administrator  
Phone: 804-371-5614  
E-Mail: [Carmen.holmes@vita.virginia.gov](mailto:Carmen.holmes@vita.virginia.gov)  
Fax: 804-371-5969

Technical Information:

Robert Gleason, VCO  
Technology Contracts Manager  
Phone: 804-371-5923  
E-Mail: [robert.gleason@vita.virginia.gov](mailto:robert.gleason@vita.virginia.gov)  
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.asd.virginia.gov>

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA):** Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT # VA-031031-NG  
CONTRACT CHANGE LOG

[illegible]

#### **4. VITA POINTS-OF-CONTACT**

##### **Contract Administration/Compliance**

Carmen Holmes, VCO  
Contracts Administrator, SCM  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, East Lobby  
Richmond, VA 23219-3931  
Tel: (804) 371-5614  
Fax: (804) 371-5969  
[carmen.holmes@vita.virginia.gov](mailto:carmen.holmes@vita.virginia.gov)

##### **Contract Information**

Robert E. Gleason, VCO  
Technology Contracts Manager, SCM  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, East Lobby  
Richmond, VA 23219-3931  
Tel: (804) 371-5923  
Fax: (804) 371-5969  
[robert.gleason@vita.virginia.gov](mailto:robert.gleason@vita.virginia.gov)

#### **5. CONTRACTOR POINTS-OF-CONTACT**

##### **Technical Representative**

Greg Cranley  
Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
Tel: (240) 684-3842  
Fax: (240) 684-3843  
Email: [gregory.cranley@ngc.com](mailto:gregory.cranley@ngc.com)

##### **Contracts Manager**

Dennis G. Buckler, Contracts Manager  
Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
Tel: (240) 684-3782  
Fax: (240) 684-3660  
Email: [dennis.buckler@ngc.com](mailto:dennis.buckler@ngc.com)

##### **BMC Software Services Inc.**

Stephanie Niner  
BMC Software Inc.  
8405 Greensboro Drive, #100  
McLean, VA 22101  
Ph: (703) 744-3582  
Fax: (703) 744-3660  
Email: [stephanie\\_niner@bmc.com](mailto:stephanie_niner@bmc.com)  
Web: <http://www.pcmallgov.com>

**ATTACHMENT "A"**  
**TO**  
**CONTRACT VA-031031-NG**

**PRODUCT PRICING**

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-031031-NG between NORTHROP GRUMMAN COMPUTING SYSTEMS, INC. and the Commonwealth of Virginia.

In the event of any discrepancy between this Attachment "A" and Contract VA-031031-NG, the provisions of Contract VA-031031-NG shall control.

**1. PRICING**

FOB price for all Products (Unit 1 pricing) and Services delivered under this Agreement are identified below. All orders for Software and Services are to be placed directly with the Contractor by Authorized Users. Orders will identify Product type, quantity, and price, with contact information necessary to fulfill delivery, including contact name, shipping and billing address and telephone number. Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction or errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

**a. PRODUCT PRICES**

<b>BMC Software DB2 Tools</b>	<b>Product License</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>	<b>Upgrade Y46 to Y56 (Note 1)</b>
<b>1. Monitor performance</b>			
BMC MainView for DB2	\$ 18,436	\$ 22,417	\$ 3,185
BMC LogMaster for DB2	\$ 34,181	\$ 41,562	\$ 5,904
<b>2. Object Admin/Mgt</b>			
BMC Change Mgr for DB2	\$ 66,333	\$ 80,655	\$ 11,458
BMC Catalog Mgr for DB2	\$ 19,406	\$ 23,596	\$ 3,352
BMC DASD Mgr for DB2	\$ 36,596	\$ 44,497	\$ 6,321



**Note 1:** The price to “upgrade” as delineated above is for a 12-month period. Any instance whereby an upgrade will be for any time period less than 12 months, the price will be pro-rated. An example of a pro-rated price for an upgrade is as follows:

*DASD Manager for DB2* requires an upgrade from Y46 to Y56 at the close of the 7th month of the license. The upgrade cost for 12 months would be \$6,321; therefore the cost per month would be 6,321 divided by 12 or \$526 per month. There are 5 months remaining on the license, so the cost to upgrade would be 5 (the number of months remaining) times 526 (the cost per month) = \$2,630. The Licensee would have paid \$36,596 for the License and \$2,630 for the upgrade for a total of \$39,226 for the twelve month period.

**b. PRODUCT MAINTENANCE PRICES**

<b>Year 2 - 1<sup>st</sup> Yr DB2 Tools Maintenance after Year 1 Warranty</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>
<b>1. Monitor performance</b>		
BMC MainView for DB2	\$ 3,688	\$ 4,484
BMC LogMaster for DB2	\$ 6,836	\$ 8,313
<b>2. Object Admin/Mgt</b>		
BMC Change Mgr for DB2	\$ 13,267	\$ 16,132
BMC Catalog Mgr for DB2	\$ 3,881	\$ 4,719
BMC DASD Mgr for DB2	\$ 7,320	\$ 8,899

<b>Year 3 - 2<sup>nd</sup> Yr DB2 Tools Maintenance after Year 1 Warranty</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>
<b>1. Monitor performance</b>		
BMC MainView for DB2	\$ 3,688	\$ 4,484
LogMaster for DB2	\$ 6,836	\$ 8,313
<b>2. Object Admin/Mgt</b>		
Change Manager for DB2	\$ 13,267	\$ 16,132
Catalog Manager for DB2	\$ 3,881	\$ 4,719
DASD Manager for DB2	\$ 7,320	\$ 8,899

**c. ONSITE INSTALLATION**

Contractors shall provide telephonic technical support to assist with installation of all products during normal business work hours 8:00 am to 5:00 pm (Eastern Standard/Eastern Daylight).

If required, Contractor will provide Onsite Technical Support for installation of Software as follows:

BMC Software will assist Authorized Users with Onsite technical support for installation of their products at the Onsite Technical Support Rate below. BMC estimates that products can be installed with one person over 10 days or two persons over 5 days.

In all instances, it is the Authorized User's responsibility to obtain from Contractor a firm, fixed-price installation quotation, at the appropriate Onsite Technical Support Rate below, prior to the placement of any Order. The Authorized User will determine and indicate the installation time table/schedule, exact installation cost, if any, at the appropriate Onsite Technical Support Rate, etc. for any Order placed for Contract products. Installation by Contractor will include all unpacking and installation of Software products, ready for Acceptance testing, and include the removal of any packing materials and debris.

**d. ONSITE TECHNICAL SUPPORT RATES (See Note 2)**

- |                                       |              |
|---------------------------------------|--------------|
| 1. Northrop Grumman Computing Systems | \$ 1,700/day |
| 2. BMC Software                       | \$ 1,920/day |

**Note 2:** Contractor will deliver On-site Technical Support Services at the above rates. Rates are charged on a per-day basis, based on an 8am-5pm schedule. Rates do not include travel, meals, or lodging expenses and in such case, all necessary and reasonable travel and living expenses will be approved on any Order by an Authorized User in advance of the Services being performed. These will be billed separately by Contractor to the Authorized User in accordance with the Commonwealth's Travel Regulations located on the Department of Accounts website <http://www.doa.state.va.us/procedures/adminservices/capp/summary.htm>. Invoices for travel shall not exceed the Commonwealth's reimbursement rates for mileage, meals, lodging, and incidental travel expenses.

**e. OPTIONAL BMC SOFTWARE DB2 PERFORMANCE HEALTHCHECK**

BMC Software offers a 5-day Onsite Healthcheck Service by a BMC Software Consultant at the above-listed daily rate of \$1,920 per day, which consists of:

- Problem identification workshop
- Roundtable session comprised of end-user personnel and IS participation
- Participants from Operations, Data Base Administration, User Applications,, and End-Users (Customers)

Healthcheck deliverables include:

- A prioritized list of problems affecting the user community that documents the problem, where possible, in quantified terms.
- Quantifies the costs of the problems to the organization
- The prioritized list of problems is provided as input into the problem-solving session.

## f. OPTIONAL TRAINING CLASSES

The following Tables provide pricing for the onsite training classes offered. Pricing covers Method 1 (public classes), Method 2 (onsite classes) and Method 3 (*Learning Pass Credits* ["LPC"]) for both public and onsite classes):

		Training Method #				
		2		3	1	3
Per Session Prices/LPCs	# Days	Onsite Class \$	Instructor Actual T&E	Onsite Equiv. LPCs	Public Class \$/person	Public Class LPCs
Monitor Performance						
* MAINVIEW Basic	4	\$15,750	Yes	31.5	\$2,100	4.2
Object Administration/Management						
DB2 Data Management (Change Manager for DB2, Catalog Manager for DB2, DASD Manager Plus for DB2)	4	\$15,750	Yes	31.5	\$2,100	4.2
Logmaster for DB2 (1 each 1 day class)	1	\$8,750	Yes	17.5	NA	NA
Logmaster for DB2 (2 each 1 day classes back-to-back)	2	\$10,450	Yes	20.9	NA	NA
Logmaster for DB2 (3 each 1 day classes back-to-back)	3	\$12,525	Yes	25.05	NA	NA

The Training Course table above contains multiple choices and scheduling flexibility to provide alternative methods to fulfill product training requirements.

The maximum number of students per Onsite class is 12. A charge of \$500 per person (or 1 LPC per person if a BMC Software course) over 12 students will be assessed if more than 12 students attend an Onsite training class.

### Alternative Training Proposal

BMC Software offers various alternative methods of training to permit additional flexibility:

- Learning Card: \$6,500 per person for one year
- Learning Pass Credits: \$500 per credit. The following discount schedule applies for bulk purchase of LPCs.



Learning Pass Credits	Discount
• 5 to 19 (Minimum Purchase of 5)	0%
• 20 to 49	5%
• 50 to 99	10%
• 100 to 199	15%
• 200 and up	20%

LPCs typically expire one (1) year after purchase. If VITA purchases 207 LPCs, the expiration of the LPCs will be eighteen (18) months from purchase date. If VITA purchases 468.60 LPCs, the expiration of the LPCs will be thirty-six (36) months from purchase date.

Bulk LPCs bought	1st 100 LPC Expire	> 100 LPCs expire
1 to 149	12 months	12 months
150 to 249	12 months	18 months
250 to 349	12 months	24 months
350 to 449	12 months	30 months
450 and up	12 months	36 months

See the Learning Pass Agreement, later in this document, for additional details about the LPC program.

**Example:** The Table below compares onsite classes purchased as Method 1 and Method 3 for two different quantities of training.

The LPC method also permits greater flexibility with location and scheduling.

Classes	Method 2 Onsite Price (Less T&E)	Equivalent LPCs	LPC Net Price (Less T&E)
One onsite session of the classes marked with a leading * in the Training Class table above	<b>\$34,500</b> (\$15,750 + \$18,750)	69	<b>\$31,050</b> (69 x \$500 = \$34,500, less 10% discount [\$3,450], for net total cost of \$31,050)
Three sets of onsite session of the classes marked with a leading * in the Training Class table above	<b>\$103,500</b>	207	<b>\$82,800</b> (207 x \$500 = \$103,500, less a 20% discount, for net total cost of \$82,800)

If VITA or any Authorized User would like to rent a BMC Software facility for private training there is a \$1750 per day classroom and equipment rental fee. If VITA or any Authorized User would like to rent a BMC Software traveling classroom for private training at the Commonwealth facility, then there is a \$1500 per day classroom and



equipment rental fee. Other customization options maybe done at additional costs that are to be based upon mutual agreement.

## **2. SHIP TO / BILL TO ADDRESSES**

Shipping and billing addresses will be included on the individual Orders of Authorized Users referencing this Contract.

## **3. DELIVERY SCHEDULE**

Contractor shall deliver all Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

All shipments shall be FOB destination. Shipping charges, if any, shall be included in product pricing. No additional charges are allowed. The delivery schedule shall be specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation.

## **4. VITA POINTS-OF-CONTACT**

### **Contract Administration/Compliance**

Carmen Holmes, VCO  
Contracts Administrator, SCM  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, East Lobby  
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[robert.gleason@vita.virginia.gov](mailto:robert.gleason@vita.virginia.gov)

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Tel. (240) 684-3842  
Fax (240) 684-3843  
Email: [gregory.cranley@ngc.com](mailto:gregory.cranley@ngc.com)

### **Contracts Manager**

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Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
Tel: (240) 684-3782  
Fax: (240) 684-3660  
Email: [dennis.buckler@ngc.com](mailto:dennis.buckler@ngc.com)

**BMC Software Services Inc.**

Stephanie Niner

BMC Software Inc.

8405 Greensboro Drive, #100

McLean, VA 22101

Ph: (703) 744-3582

Fax: (703) 744-3660

Email: [stephanie\\_niner@bmc.com](mailto:stephanie_niner@bmc.com)

Web: <http://www.pcmallgov.com>

**Appendix 1 to  
ATTACHMENT "A"  
TO  
CONTRACT VA-031031-NG  
  
LEARNING PASS AGREEMENT**

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This Learning Pass Agreement (the "Agreement") is effective as of date of award (the "Effective Date") and shall remain in effect through 365 days, thereafter, unless deemed differently in Section 9 below (the "Expiration Date"). Appendix 1 is hereby incorporated into and made an integral part of Agreement Number VA-031031-NG between NORTHROP GRUMMAN COMPUTING SYSTEMS, INC. and the Commonwealth of Virginia.

1. **Scope.** As Northrop Grumman Computing System's subcontractor, BMC Software agrees to provide the Commonwealth with BMC Software Professional Services Learning Pass Credits ("LPCs") at the quantity and discounted price stated in this Agreement. The Commonwealth may use the LPCs to purchase training from BMC SOFTWARE, either at public classes or in private training at the Commonwealth's designated sites. All training shall be done by professional instructors who are skilled in the subject matter of a specific class.
2. **Use of Learning Pass Credits.** LPCs are good for one (1) year from date of Effective Date of this Agreement, unless extended longer per Section 8. For public classes, LPC usage is determined by dividing the undiscounted price per LPC into the published class price. In a private onsite class, the number of LPCs used will be based on the price of the on-site class for up to ten (12) individuals. An additional two (2) LPCs per day are required for private on-site training if BMC SOFTWARE is required to provide the classroom equipment (maximum of twelve (12) students).
3. **Pin Code.** BMC SOFTWARE will issue a PIN code to an individual designated by VITA (the "Contact"). All VITA-authorized personnel will use this PIN code when enrolling in a class as a means of payment. VITA is responsible for authorizing individuals to use the PIN code and for ensuring proper usage of the PIN code. BMC SOFTWARE is not responsible for unauthorized use of the PIN code.
4. **Attendance.** Credits used are based on the price of the class, not the days an individual student attends such class. For example, if the price of a public class is \$2100, attendance requires 4.2 LPCs (\$2100 divided by \$500), even if the student attends only three (3) days of the class.
5. **Facility and Training Materials.** BMC SOFTWARE shall provide all Commonwealth personnel attending classes with adequate classroom facilities and all instructional materials.



6. **Monthly Reports.** BMC SOFTWARE will provide the Contact with a monthly report that details usage of the LPCs to date. The report will specify the user, the class, the number of LPCs used and the LPC balance remaining.
7. **Location of Work.** If the Commonwealth elects to use LPCs for public training classes, training will take place at a regularly scheduled training class in a facility normally used by BMC SOFTWARE for that purpose. If the Commonwealth elects to use LPCs for training in a private on-site setting, the Authorized User shall pay all related travel expenses for the instructor, in addition to the required number of LPCs.
8. **Project Timeline.** BMC SOFTWARE provides training throughout the year. VITA may contact BMC SOFTWARE for a schedule of training classes. The LPCs issued pursuant to this Agreement shall expire twelve (12) months from the Effective Date of this Agreement. Any remaining LPCs not utilized during the twelve (12) months period shall be forfeited by the Commonwealth.

Bulk LPCs bought	1st 100 LPC Expire	> 100 LPCs expire
1 to 149	12 months	12 months
150 to 249	12 months	18 months
250 to 349	12 months	24 months
350 to 449	12 months	30 months
450 and up	12 months	36 months

9. **Agreement Extension.** Ninety (90) days prior to the Expiration Date of this Agreement, VITA will be notified by BMC SOFTWARE as to the Expiration Date of this Agreement. If VITA extends the Agreement for an additional year, it may roll any unused LPCs from the previous Agreement into the new annual agreement provided that they sign up for a quantity of LPCs that is equal to the same discount level as the prior year. Example:
  - # of LPCs originally purchased = 70 with a 10% discount
  - # of LPCs left at end of year = 10
  - # of additional LPCs required for the extension and maintain the 10% discount = 60 LPCs
10. **Usage.** LPCs are for the exclusive use of the Commonwealth and Authorized Users and may not be resold, transferred or bartered.
11. **Notification Contacts.**

**BMC Software Services, Inc.**  
 Name: Stephanie Niner  
 Title: Education Services Rep.  
 Phone: 703-744-3582  
 Fax: 703-744-3660  
 e-Mail: [Stephanie\\_Niner@bmc.com](mailto:Stephanie_Niner@bmc.com)  
 Address: 8405 Greensboro Drive, #100  
 McLean, Virginia 22101

**VITA**  
 Name: Danny Wilmoth  
 Title: Information Technology Mgr II  
 Phone: 804-371-5799  
 Fax: 804-371-5247  
 e-Mail: [danny.wilmoth@vita.virginia.gov](mailto:danny.wilmoth@vita.virginia.gov)  
 Address: 110 S. 7th Street, East Lobby  
 Richmond, VA 23219



**MASTER ORDERING AGREEMENT  
CONTRACT VA-031031-NG  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
NORTHROP GRUMMAN COMPUTING SYSTEMS, INC.**

**1. SCOPE OF AGREEMENT**

This is a Master Agreement (the "Contract" or "Agreement") between the Commonwealth of Virginia hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) and NORTHROP GRUMMAN COMPUTING SYSTEMS, INC. hereinafter referred to as "Contractor", a wholly owned subsidiary of Northrop Grumman Information Technology, Inc, a Maryland corporation, and having its principal place of business at 2411 Dulles Corner Park, Suite 500, Herndon, VA 20171 for the purchase of software ("Product", "Products", or "Software"), along with any required maintenance and technical support maintenance, installation, or training services ("Services") by VITA on the behalf of State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301, entitled "Definitions" of the *Virginia Public Procurement Act* (VPPA), as amended, hereinafter referred to as "Authorized Users", pursuant to the Commonwealth's Request For Proposal #2003-039, dated March 31, 2003 (the "RFP") and the Contractor's proposal, dated May 6, 2003 in response thereto.

At any time during the term of this Master Agreement or any extension thereof, VITA may order additional quantities of Software or Services purchased under this Agreement for VITA or other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users".

This Master Agreement may only be used subject to a valid sole source or other appropriate procurement method as delineated in the VPPA, or other as VITA or its successor deems appropriate.

The Virginia General Assembly has passed legislation abolishing the Department of information Technology ("DIT") as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency named the Virginia Information Technologies Agency ("VITA"). Therefore, for purposes of this Agreement all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

## **2. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled 1 through 69, Attachment A, entitled Product Pricing and Attachment B entitled Lobbying Certificate; (2) the Commonwealth's RFP 2003-39, dated March 31, 2003, and amendments thereto, (3) the Contractor's proposal dated May 6, 2003 in response to the Commonwealth's RFP 2003-39 dated March 31, 2003 and amendments thereto; (4) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

## **3. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at <http://www.dgs.state.va.us/dps/> under "Manuals."

## **4. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

## **5. ANTI-DISCRIMINATION**

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not

discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E)

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **6. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

## **7. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

## **8. DEBARMENT STATUS**

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

## **9. ANTITRUST**

By entering into a Contract, the Contractor agrees to aggressively pursue all causes of action it may have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract. Should the Commonwealth, at the Commonwealth's discretion, desire to participate in any action, the Contractor shall permit the Commonwealth's involvement to any degree.

## **10. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

## **11. CLARIFICATION OF TERMS**

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

## **12. PAYMENT**

### **A. To Prime Contractor:**

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number;



social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

**B. To Subcontractors:**

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
  - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions

apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

### **13. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

### **14. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

### **15. ASSIGNMENT OF CONTRACT**

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Virginia Information Technologies Agency's (VITA's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the VITA purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on VITA's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager, VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Fiscal Officer, VITA of the assignment and shall supply the Fiscal Officer with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Directorate of VITA shall promptly notify the Contractor of any assignment notice it receives.

## 16. MODIFICATIONS

This Contract may be modified in accordance with § 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing on paper and signed in ink by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, The only representatives authorized to modify this Agreement on behalf of the Commonwealth and the Contractor are shown below.

Any Contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

### **CONTRACTOR**

Dennis G. Buckler  
Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
[dennis.buckler@ngc.com](mailto:dennis.buckler@ngc.com)

### **COMMONWEALTH OF VIRGINIA**

Contracts Manager  
Virginia Information Technologies Agency  
Richmond Plaza Bldg., Lobby Level  
110 South 7th Street  
Richmond, VA 23219  
[contracts@vita.virginia.gov](mailto:contracts@vita.virginia.gov)

## 17. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## 18. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

## **19. INSURANCE**

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. Automobile Liability - \$500,000 - Combined single limit

## **20. ANNOUNCEMENT OF AWARD**

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (<http://www.eva.state.va.us>) for a minimum of 10 days.

## **21. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.



For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

## **22. NONDISCRIMINATION OF CONTRACTORS**

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

## **23. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal <http://www.eva.state.va.us>, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Special Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

## **24. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

## **25. NON-APPROPRIATION**

All funds for payment of software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

## **26. CONTRACTUAL RECORDS**

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of three years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

## **27. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

## **28. PURCHASE OPTION**

At any time during the term of this Master Agreement, VITA may order additional quantities of items or features purchased under this Agreement for VITA or other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users" by sending the Contractor a written Order to that effect, signed by the Commonwealth's Contracts Manager or designated representative. The purchase price shall be the lower of the unit cost identified in any executed Attachment or the Contractor's then-current, published price. The foregoing shall not apply to services provided

to the Commonwealth at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

## **29. PRICE PROTECTION**

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement.

## **30. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for a period of time to include delivery, installation, training, acceptance, one year of warranty and two years of Software maintenance support services, collectively "Initial Term". By mutual written agreement, this Agreement may be extended for one (1) year periods after the Initial Term. The Commonwealth shall issue a written notice to the Contractor thirty (30) days prior to the expiration of the then current term, stating the requirement to extend the Contract.

## **31. DELIVERY DATE**

Contractor shall deliver all Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

## **32. RECORDS**

The Commonwealth shall maintain appropriate daily records documenting performance during the Acceptance Period and such records shall be conclusive for purposes of determining Acceptance.

## **33. TRAINING**

Contractor shall provide On-site training and training materials, as delineated in Section 4. Mandatory Requirements of the Commonwealth's RFP 2003-39, dated March 31, 2003, and amendments thereto, for up to ten (10) engineers for installation and operation, to be determined by VITA and for up to twenty (20) students, in two (2) sessions on product installation, operation and general information about the software product.

### 34. MANUALS

At the time of Software installation, Contractor shall provide a minimum of five (5) hard copies and one (1) soft copy of product documentation (Installation and User Manuals). Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities expected of such deliverables.

### 35. ORDERS

VITA will order Software or Services from this Contract by one of the following Order methods:

- a. Purchase Order (PO): A VITA PO issued by the Acquisition Services Directorate, VITA
- b. Delivery Order (DO): A VITA DO issued by the Acquisition Services Directorate, VITA
- c. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor shall accept any and all orders issued through eVA by the Acquisition Services Directorate, VITA
- d. Charge/Credit Card: Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.

This ordering authority is limited to issuing orders for the Products/Services available under this Agreement. Orders will identify the type, quantity, and price of the Product or Service as identified in Attachment A herein entitled "*PRODUCT PRICING*", and contact information necessary to fulfill delivery and include contact name, shipping and billing address, and telephone number. Under no circumstances shall any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

### 36. INVOICES

All invoices shall be rendered promptly to VITA after all Products or Services covered by the invoice has been accepted. No invoice may include any costs other than those identified herein. Invoices shall provide at a minimum:

- 1. Type and description of the Product or Services;
- 2. Serial number, if any;
- 3. Charge for each item;



4. This Contract Number, and;

5. Contractor's Federal Identification Number (FIN);

### **37. AVAILABILITY OF SOFTWARE**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

### **38. SOFTWARE SPECIFICATION**

Each software Product shall conform to all specifications published or provided by the Contractor or developer in all respects, including, but not limited to, operating performance, timing characteristics, sizing and compatibility.

### **39. LICENSED SOFTWARE**

Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

### **40. TERM OF LICENSE**

All licenses granted under this Agreement are purchased on a non-exclusive, perpetual license basis and shall commence upon Acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder without first obtaining a written decision from a court of competent jurisdiction that identifies that specific remedy.

### **41. SOFTWARE UPGRADES**

Provided the Commonwealth has procured current software maintenance, the Commonwealth shall be entitled to receive any and all upgraded versions of the Software Product that Contractor may make available in the future including any third party Software Product provided by the Contractor under this Agreement. The maximum charge to the Commonwealth shall not exceed the difference between the price which the Commonwealth paid for the present version, and the lowest price at which the Contractor has sold or licensed the upgraded version.

## **42. CONFIDENTIALITY**

The Commonwealth agrees that when the Software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the Software Product in the same manner as it would deal with its own confidential information. The Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the Software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

The Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section entitled "CONFIDENTIALITY" shall terminate three (3) years after the Commonwealth ceases using the Software Product containing the proprietary information.

## **43. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth
- d. The right to copy such software for safekeeping or backup purposes
- e. The right to combine such Software product with other programs or material at the Commonwealth's risk
- f. The right to technically support and maintain such Software Products that a Contractor discontinues Software support and maintenance, or such that the Contractor does not provide a replacement product for; in no event shall the Commonwealth have the right to de-compile or reverse-engineer any Software Product

- g. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement
- h. Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources

#### **44. SOFTWARE WARRANTY**

Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor, and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

#### **45. DISPOSITION OF SOFTWARE**

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

#### **46. CORRECTION OF ERRORS**

In the event Contractor cannot correct errors in the then-current, unaltered version (including updates) of the Software Products to keep such products in specified operating condition by responsive service, the Contractor shall replace or fix the Product within thirty (30) days. In the event Contractor does not keep the Software Product(s) in specified operating condition in accordance with this Agreement, then the Commonwealth, at its sole option, shall have the right to return any or all of the software and related technical data and Contractor shall refund the total fees paid less a pro rata amount based on a sixty (60) month period from the date of Acceptance.

#### **47. PRINCIPAL PERIOD OF MAINTENANCE**

The Principal Period of Maintenance (the "PPM") for Software Support Warranty/Maintenance Services is hereby defined as twenty-four (24) hours per day, seven (7) days per week, 365 days per year, including holidays.

#### **48. RESPONSE TIME**

During the PPM, the Contractor shall provide Software Support Warranty/Maintenance Services via telephone to initiate corrective action within a two (2) hour response time. (The "Response Time")

#### **49. CONTRACTOR'S MAINTENANCE POINT-OF-CONTACT**

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its maintenance representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

#### **50. MAINTENANCE AND SOFTWARE SUPPORT**

When requested by the Commonwealth, the Contractor shall always be responsive to maintenance requirements of the Commonwealth. Maintenance Service (Software Support Services) shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product. The Commonwealth shall be entitled to all revisions, patches, updates, enhancements and upgrades for the Software during any covered Maintenance period at no additional charge. Maintenance charges shall include all travel that the Contractor deems necessary at its sole discretion, labor, documentation, and telephonic support. At the expiration of the initial first year Warranty, the Commonwealth shall have the option of purchasing up to two (2) additional one-year periods of Maintenance Support Service as long as the Software Maintenance is generally made available to Contractors' other customers, at the prices contained herein. Thereafter, additional periods of Software maintenance support shall be provisioned as described below. The Contractor's response times during these Maintenance periods for problem determination and resolution is as specified herein under the section entitled "Response Time."

#### **51. MAINTENANCE RENEWAL**

At the expiration of the initial first year Warranty, and the second and third year Maintenance periods, Software Support Maintenance under this Agreement may be renewed at the sole option of the Commonwealth for any instance whereby the Contractor continues to offer continuing Software maintenance to its other customers. The Commonwealth shall issue a written notification to the Contractor for each additional one (1) year period that Software Support Maintenance Services is required. The price for such additional maintenance for years two and three shall be as set forth herein. The percentage increase for years after three

shall not exceed 8% (eight percent) from any previous year. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer.

## **52. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph 52.



### **53. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder without a written decision from a court of competent jurisdiction identifying that specific remedy.

### **54. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor's liability under this contract for loss or damages to government property caused by the use of any defective or deficient supplies, products, equipment and/or services delivered under this Contract shall not exceed the greater of two million dollars (\$2,000,000.00) or two times the total amount paid to the Contractor under this contract. The Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation per liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or willful negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement."

## 55. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

## 56. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME				
<u>ADDRESS AND</u>	<u>TYPE GOODS/</u>	<u>ACTUAL</u>	<u>PLANNED</u>	<u>% OF TOTAL</u>
<u>PHONE NUMBER</u>	<u>SERVICES</u>	<u>DOLLARS</u>	<u>DOLLARS</u>	<u>CONTRACT</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

## 57. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the VITA Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

## **58. COMPLIANCE WITH FEDERAL LOBBYING ACT**

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time there under (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

## **59. NONVISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

## **60. DISASTER RECOVERY**

By executing this Agreement, Contractor hereby authorizes the Commonwealth to operate Contractor's licensed software products identified in this Agreement at other location(s) for purposes of disaster recovery and disaster recovery testing. In addition, Contractor recognizes that to prepare for such an event the Commonwealth must test the Contractor's software product (normally for a period of two to three days, twice annually) at a disaster recovery vendor's Cold Site. The use of Contractor's software products by the Commonwealth, at such times and under such events will be in accordance with the terms and conditions of this Agreement. Contractor agrees that there shall be no additional charge to the Commonwealth when Contractor's software products are used during an actual disaster or for disaster recovery testing.

## **61. CONTRACTOR'S REPORT OF SALES**

In any event wherein VITA places an order for Products that are to be licensed at any other site than VITA, then the Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales of Product for other than the VITA location under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, VITA, and a copy of the report to the Contracts Manager, VITA, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be mailed in hard copy. An electronic version is also desired and this report can be emailed to VITA at [Contracts@vita.virginia.gov](mailto:Contracts@vita.virginia.gov). The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition

through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

## **62. INDUSTRIAL FUNDING ADJUSTMENT**

In any event wherein VITA places an order for Products that are to be licensed at any other site than VITA, then the Contractor must pay VITA, an Industrial Funding Adjustment (IFA) for all Products ordered for other than the VITA location. The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. VITA may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from VITA that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, VITA.

If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

## **63. INSTALLATION RESPONSIBILITY**

Except where otherwise expressly provided, "delivery" includes, without limitation, shipping FOB destination, unpacking and preparation of Product, and the provision for On-site technical staff and Software Support Services during installation. Delivery shall not be complete until the Commonwealth, with assistance by Contractor's On-site technical staff, if required by the Commonwealth, completes the installation of all Products ready for Acceptance Testing. The installation schedule shall be mutually agreed upon by both parties prior to execution of the contract.



#### **64. COMMENCEMENT OF ACCEPTANCE TESTING**

Products shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products are ready to begin Acceptance Testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and change the delivery date accordingly. During the Acceptance Testing period, the Contractor shall provide Telephonic Support Services twenty-four (24) hours a day, seven (7) days a week. As required by the Commonwealth, Contractor shall provide On-site Technical Support within twenty-four (24) hours of notification, for a period of up to five (5) days at the onsite rates in Attachment A.

#### **65. REQUIRED PERFORMANCE LEVEL**

To qualify for Acceptance, all Products must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in the Acceptance Plan developed and mutually agreed to by the Contractor and the Commonwealth, for a period of thirty (30) consecutive days. The Commonwealth shall not pay any software license charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product does not meet the standard of performance during the initial thirty (30) consecutive days, the Acceptance Period shall continue on a day-to-day basis until all Products concurrently meet the standard of performance for thirty (30) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the Acceptance Period, but such a delay shall not exceed thirty (30) consecutive days.

#### **66. ACCEPTANCE**

Products shall be deemed accepted on the first day after successful completion of the Acceptance Period defined herein under "REQUIRED PERFORMANCE LEVEL". Upon request, the Commonwealth shall provide written confirmation of Acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the Acceptance Period, then the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

## 67. CONTRACT DOCUMENTS

Nothing contained in this Contract is considered Proprietary or Confidential or containing trade secrets as determined by the Contractor. All Contractor provided quotes and other information, in response to VITA's request in the performance of this Contract, shall not contain any proprietary or Confidential information. The Contractor hereby irrevocably withdraws any claim that any future document provided to in response to actions under this Contract, should be treated as proprietary, confidential or contain trade secrete information.


All Contractor documents and information provided in response to VITA's request under the performance of this Contact, as well as all documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Contractor agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted herein.

## 68. WARRANTY AGAINST SHUTDOWN DEVICES

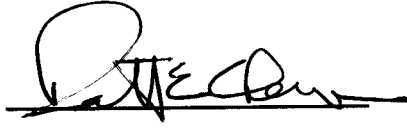
Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees nor subcontractors shall insert any such device after execution of this Agreement.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

**NORTHROP GRUMMAN COMPUTING  
SYSTEMS, INC.**

BY:   
NAME: DENNIS BUCKLER  
TITLE: CONTRACTS MANAGER  
DATE: 12/5/03

**COMMONWEALTH OF VIRGINIA**

BY:   
NAME: Robert E. Gleason  
TITLE: Technology Contracts Mgr  
DATE: 12/19/03

**ATTACHMENT "A"**  
**TO**  
**CONTRACT VA-031031-NG**

***PRODUCT PRICING***

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-031031-NG between NORTHROP GRUMMAN COMPUTING SYSTEMS, INC. and the Commonwealth of Virginia.

In the event of any discrepancy between this Attachment "A" and Contract VA-031031-NG, the provisions of Contract VA-031031-NG shall control.

**1. PRICING**

FOB price for all Products (Unit 1 pricing) and Services delivered under this Agreement are identified below. All orders for Software and Services are to be placed directly with the Contractor by Authorized Users. Orders will identify Product type, quantity, and price, with contact information necessary to fulfill delivery, including contact name, shipping and billing address and telephone number. Contractor warrants the operation of the Software Product identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products which fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

**a. PRODUCT PRICES**

<b>BMC Software DB2 Tools</b>	<b>Product License</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>	<b>Upgrade Y46 to Y56 (Note 1)</b>
<b>1. Monitor performance</b>			
BMC MainView for DB2	\$ 18,436	\$ 22,417	\$ 3,185
BMC LogMaster for DB2	\$ 34,181	\$ 41,562	\$ 5,904
<b>2. Object Admin/Mgt</b>			
BMC Change Mgr for DB2	\$ 66,333	\$ 80,655	\$ 11,458
BMC Catalog Mgr for DB2	\$ 19,406	\$ 23,596	\$ 3,352
BMC DASD Mgr for DB2	\$ 36,596	\$ 44,497	\$ 6,321

**Note 1:** The price to “upgrade” as delineated above is for a 12-month period. Any instance whereby an upgrade will be for any time period less than 12 months, the price will be pro-rated. An example of a pro-rated price for an upgrade is as follows:

*DASD Manager for DB2* requires an upgrade from Y46 to Y56 at the close of the 7th month of the license. The upgrade cost for 12 months would be \$6,321; therefore the cost per month would be 6,321 divided by 12 or \$526 per month. There are 5 months remaining on the license, so the cost to upgrade would be 5 (the number of months remaining) times 526 (the cost per month) = \$2,630. The Licensee would have paid \$36,596 for the License and \$2,630 for the upgrade for a total of \$39,226 for the twelve month period.

**b. PRODUCT MAINTENANCE PRICES**

<b>Year 2 - 1<sup>st</sup> Yr DB2 Tools Maintenance after Year 1 Warranty</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>
<b>1. Monitor performance</b>		
BMC MainView for DB2	\$ 3,688	\$ 4,484
BMC LogMaster for DB2	\$ 6,836	\$ 8,313
<b>2. Object Admin/Mgt</b>		
BMC Change Mgr for DB2	\$ 13,267	\$ 16,132
BMC Catalog Mgr for DB2	\$ 3,881	\$ 4,719
BMC DASD Mgr for DB2	\$ 7,320	\$ 8,899

<b>Year 3 - 2<sup>nd</sup> Yr DB2 Tools Maintenance after Year 1 Warranty</b>		
	<b>IBM 9672-Y46</b>	<b>IBM 9672-Y56</b>
<b>1. Monitor performance</b>		
BMC MainView for DB2	\$ 3,688	\$ 4,484
LogMaster for DB2	\$ 6,836	\$ 8,313
<b>2. Object Admin/Mgt</b>		
Change Manager for DB2	\$ 13,267	\$ 16,132
Catalog Manager for DB2	\$ 3,881	\$ 4,719
DASD Manager for DB2	\$ 7,320	\$ 8,899

**c. ONSITE INSTALLATION**

Contractors shall provide telephonic technical support to assist with installation of all products during normal business work hours 8:00 am to 5:00 pm (Eastern Standard/Eastern Daylight).

If required, Contractor will provide Onsite Technical Support for installation of Software as follows:

BMC Software will assist Authorized Users with Onsite technical support for installation of their products at the Onsite Technical Support Rate below. BMC estimates that products can be installed with one person over 10 days or two persons over 5 days.

In all instances, it is the Authorized User's responsibility to obtain from Contractor a firm, fixed-price installation quotation, at the appropriate Onsite Technical Support Rate below, prior to the placement of any Order. The Authorized User will determine and indicate the installation time table/schedule, exact installation cost, if any, at the appropriate Onsite Technical Support Rate, etc. for any Order placed for Contract products. Installation by Contractor will include all unpacking and installation of Software products, ready for Acceptance testing, and include the removal of any packing materials and debris.

**d. ONSITE TECHNICAL SUPPORT RATES (See Note 2)**

- |                                       |              |
|---------------------------------------|--------------|
| 1. Northrop Grumman Computing Systems | \$ 1,700/day |
| 2. BMC Software                       | \$ 1,920/day |

**Note 2:** Contractor will deliver On-site Technical Support Services at the above rates. Rates are charged on a per-day basis, based on an 8am-5pm schedule. Rates do not include travel, meals, or lodging expenses and in such case, all necessary and reasonable travel and living expenses will be approved on any Order by an Authorized User in advance of the Services being performed. These will be billed separately by Contractor to the Authorized User in accordance with the Commonwealth's Travel Regulations located on the Department of Accounts website <http://www.doa.state.va.us/procedures/adminservices/capp/summary.htm>. Invoices for travel shall not exceed the Commonwealth's reimbursement rates for mileage, meals, lodging, and incidental travel expenses.

**e. OPTIONAL BMC SOFTWARE DB2 PERFORMANCE HEALTHCHECK**

BMC Software offers a 5-day Onsite Healthcheck Service by a BMC Software Consultant at the above-listed daily rate of \$1,920 per day, which consists of:

- Problem identification workshop
- Roundtable session comprised of end-user personnel and IS participation
- Participants from Operations, Data Base Administration, User Applications,, and End-Users (Customers)

Healthcheck deliverables include:

- A prioritized list of problems affecting the user community that documents the problem, where possible, in quantified terms.
- Quantifies the costs of the problems to the organization
- The prioritized list of problems is provided as input into the problem-solving session.



## f. OPTIONAL TRAINING CLASSES

The following Tables provide pricing for the onsite training classes offered. Pricing covers Method 1 (public classes), Method 2 (onsite classes) and Method 3 (*Learning Pass Credits* ["LPC"]) for both public and onsite classes):

		Training Method #				
		2		3	1	3
Per Session Prices/LPCs	# Days	Onsite Class \$	Instructor Actual T&E	Onsite Equiv. LPCs	Public Class \$/person	Public Class LPCs
Monitor Performance						
* MAINVIEW Basic	4	\$15,750	Yes	31.5	\$2,100	4.2
Object Administration/Management						
DB2 Data Management (Change Manager for DB2, Catalog Manager for DB2, DASD Manager Plus for DB2)	4	\$15,750	Yes	31.5	\$2,100	4.2
Logmaster for DB2 (1 each 1 day class)	1	\$8,750	Yes	17.5	NA	NA
Logmaster for DB2 (2 each 1 day classes back-to-back)	2	\$10,450	Yes	20.9	NA	NA
Logmaster for DB2 (3 each 1 day classes back-to-back)	3	\$12,525	Yes	25.05	NA	NA

The Training Course table above contains multiple choices and scheduling flexibility to provide alternative methods to fulfill product training requirements.

The maximum number of students per Onsite class is 12. A charge of \$500 per person (or 1 LPC per person if a BMC Software course) over 12 students will be assessed if more than 12 students attend an Onsite training class.

### Alternative Training Proposal

BMC Software offers various alternative methods of training to permit additional flexibility:

- Learning Card: \$6,500 per person for one year
- Learning Pass Credits: \$500 per credit. The following discount schedule applies for bulk purchase of LPCs.

Learning Pass Credits	Discount
• 5 to 19 (Minimum Purchase of 5)	0%
• 20 to 49	5%
• 50 to 99	10%
• 100 to 199	15%
• 200 and up	20%

LPCs typically expire one (1) year after purchase. If VITA purchases 207 LPCs, the expiration of the LPCs will be eighteen (18) months from purchase date. If VITA purchases 468.60 LPCs, the expiration of the LPCs will be thirty-six (36) months from purchase date.

Bulk LPCs bought	1st 100 LPC Expire	> 100 LPCs expire
1 to 149	12 months	12 months
150 to 249	12 months	18 months
250 to 349	12 months	24 months
350 to 449	12 months	30 months
450 and up	12 months	36 months

See the Learning Pass Agreement, later in this document, for additional details about the LPC program.

**Example:** The Table below compares onsite classes purchased as Method 1 and Method 3 for two different quantities of training.

The LPC method also permits greater flexibility with location and scheduling.

Classes	Method 2 Onsite Price (Less T&E)	Equivalent LPCs	LPC Net Price (Less T&E)
One onsite session of the classes marked with a leading * in the Training Class table above	<b>\$34,500</b> (\$15,750 + \$18,750)	69	<b>\$31,050</b> (69 x \$500 = \$34,500, less 10% discount [\$3,450], for net total cost of \$31,050)
Three sets of onsite session of the classes marked with a leading * in the Training Class table above	<b>\$103,500</b>	207	<b>\$82,800</b> (207 x \$500 = \$103,500, less a 20% discount, for net total cost of \$82,800)

If VITA or any Authorized User would like to rent a BMC Software facility for private training there is a \$1750 per day classroom and equipment rental fee. If VITA or any Authorized User would like to rent a BMC Software traveling classroom for private training at the Commonwealth facility, then there is a \$1500 per day classroom and

equipment rental fee. Other customization options maybe done at additional costs that are to be based upon mutual agreement.

## **2. SHIP TO / BILL TO ADDRESSES**

Shipping and billing addresses will be included on the individual Orders of Authorized Users referencing this Contract.

## **3. DELIVERY SCHEDULE**

Contractor shall deliver all Products, ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Products is not completed within thirty (30) days after scheduled delivery date, the Commonwealth may cancel the Agreement without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

All shipments shall be FOB destination. Shipping charges, if any, shall be included in product pricing. No additional charges are allowed. The delivery schedule shall be specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation.

## **4. VITA POINTS-OF-CONTACT**

### **Contract Administration/Compliance**

Carmen Holmes, VCO  
Contracts Administrator, SCM  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, East Lobby  
Richmond, VA 23219-3931  
Tel: (804) 371-5614  
Fax: (804) 371-5969  
[carmen.holmes@vita.virginia.gov](mailto:carmen.holmes@vita.virginia.gov)

### **Contract Information**

Robert E. Gleason, VCO  
Technology Contracts Manager, SCM  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, East Lobby  
Richmond, VA 23219-3931  
Tel: (804) 371-5923  
Fax: (804) 371-5969  
[robert.gleason@vita.virginia.gov](mailto:robert.gleason@vita.virginia.gov)

## **5. CONTRACTOR POINTS-OF-CONTACT**

### **Technical Representative**

Greg Cranley  
Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
Tel: (240) 684-3842  
Fax: (240) 684-3843  
Email: [gregory.cranley@ngc.com](mailto:gregory.cranley@ngc.com)

### **Contracts Manager**

Dennis G. Buckler, Contracts Manager  
Northrop Grumman Computing Systems  
7501 Greenway Center Drive  
Greenbelt, MD 20770  
Tel: (240) 684-3782  
Fax: (240) 684-3660  
Email: [dennis.buckler@ngc.com](mailto:dennis.buckler@ngc.com)

**BMC Software Services Inc.**

Stephanie Niner

BMC Software Inc.

8405 Greensboro Drive, #100

McLean, VA 22101

Ph: (703) 744-3582

Fax: (703) 744-3660

Email: [stephanie\\_niner@bmc.com](mailto:stephanie_niner@bmc.com)

Web: <http://www.pcmallgov.com>

**Appendix 1 to  
ATTACHMENT "A"  
TO  
CONTRACT VA-031031-NG  
*LEARNING PASS AGREEMENT***

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This Learning Pass Agreement (the "Agreement") is effective as of date of award (the "Effective Date") and shall remain in effect through 365 days, thereafter, unless deemed differently in Section 9 below (the "Expiration Date"). Appendix 1 is hereby incorporated into and made an integral part of Agreement Number VA-031031-NG between NORTHROP GRUMMAN COMPUTING SYSTEMS, INC. and the Commonwealth of Virginia.

1. **Scope.** As Northrop Grumman Computing System's subcontractor, BMC Software agrees to provide the Commonwealth with BMC Software Professional Services Learning Pass Credits ("LPCs") at the quantity and discounted price stated in this Agreement. The Commonwealth may use the LPCs to purchase training from BMC SOFTWARE, either at public classes or in private training at the Commonwealth's designated sites. All training shall be done by professional instructors who are skilled in the subject matter of a specific class.
2. **Use of Learning Pass Credits.** LPCs are good for one (1) year from date of Effective Date of this Agreement, unless extended longer per Section 8. For public classes, LPC usage is determined by dividing the undiscounted price per LPC into the published class price. In a private onsite class, the number of LPCs used will be based on the price of the on-site class for up to ten (12) individuals. An additional two (2) LPCs per day are required for private on-site training if BMC SOFTWARE is required to provide the classroom equipment (maximum of twelve (12) students).
3. **Pin Code.** BMC SOFTWARE will issue a PIN code to an individual designated by VITA (the "Contact"). All VITA-authorized personnel will use this PIN code when enrolling in a class as a means of payment. VITA is responsible for authorizing individuals to use the PIN code and for ensuring proper usage of the PIN code. BMC SOFTWARE is not responsible for unauthorized use of the PIN code.
4. **Attendance.** Credits used are based on the price of the class, not the days an individual student attends such class. For example, if the price of a public class is \$2100, attendance requires 4.2 LPCs (\$2100 divided by \$500), even if the student attends only three (3) days of the class.
5. **Facility and Training Materials.** BMC SOFTWARE shall provide all Commonwealth personnel attending classes with adequate classroom facilities and all instructional materials.



6. **Monthly Reports.** BMC SOFTWARE will provide the Contact with a monthly report that details usage of the LPCs to date. The report will specify the user, the class, the number of LPCs used and the LPC balance remaining.
7. **Location of Work.** If the Commonwealth elects to use LPCs for public training classes, training will take place at a regularly scheduled training class in a facility normally used by BMC SOFTWARE for that purpose. If the Commonwealth elects to use LPCs for training in a private on-site setting, the Authorized User shall pay all related travel expenses for the instructor, in addition to the required number of LPCs.
8. **Project Timeline.** BMC SOFTWARE provides training throughout the year. VITA may contact BMC SOFTWARE for a schedule of training classes. The LPCs issued pursuant to this Agreement shall expire twelve (12) months from the Effective Date of this Agreement. Any remaining LPCs not utilized during the twelve (12) months period shall be forfeited by the Commonwealth.

<b>Bulk LPCs bought</b>	<b>1st 100 LPC Expire</b>	<b>&gt; 100 LPCs expire</b>
1 to 149	12 months	12 months
150 to 249	12 months	18 months
250 to 349	12 months	24 months
350 to 449	12 months	30 months
450 and up	12 months	36 months

9. **Agreement Extension.** Ninety (90) days prior to the Expiration Date of this Agreement, VITA will be notified by BMC SOFTWARE as to the Expiration Date of this Agreement. If VITA extends the Agreement for an additional year, it may roll any unused LPCs from the previous Agreement into the new annual agreement provided that they sign up for a quantity of LPCs that is equal to the same discount level as the prior year. Example:
  - # of LPCs originally purchased = 70 with a 10% discount
  - # of LPCs left at end of year = 10
  - # of additional LPCs required for the extension and maintain the 10% discount = 60 LPCs
10. **Usage.** LPCs are for the exclusive use of the Commonwealth and Authorized Users and may not be resold, transferred or bartered.
11. **Notification Contacts.**

**BMC Software Services, Inc.**  
 Name: Stephanie Niner  
 Title: Education Services Rep.  
 Phone: 703-744-3582  
 Fax: 703-744-3660  
 e-Mail: [Stephanie\\_Niner@bmc.com](mailto:Stephanie_Niner@bmc.com)  
 Address: 8405 Greensboro Drive, #100  
 McLean, Virginia 22101

**VITA**  
 Name: Danny Wilmoth  
 Title: Information Technology Mgr II  
 Phone: 804-371-5799  
 Fax: 804-371-5247  
 e-Mail: [danny.wilmoth@vita.virginia.gov](mailto:danny.wilmoth@vita.virginia.gov)  
 Address: 110 S. 7th Street, East Lobby  
 Richmond, VA 23219

**ATTACHMENT "B"**  
**TO**  
**AGREEMENT VA-031031-NG**

***CERTIFICATION REGARDING LOBBYING***

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_